



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 19, 2015

CBCA 4470-C(3772)

CROCKETT FACILITIES SERVICES, INC.,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Eden Brown Gaines of Brown Gaines, LLC, White Plains, MD, counsel for Applicant.

Elyssa Tanenbaum, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **STERN**, **HYATT**, and **KULLBERG**.

STERN, Board Judge.

We have before us the timely application of Crockett Facilities Services, Inc. (Crockett or applicant) for an award of attorney fees and costs in the amount of \$2972.25, under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2012). Based on a joint stipulation of the parties, we earlier granted an appeal for the payment of certain invoices that the General Services Administration (GSA or respondent) had not previously paid. *Crockett*

Facilities Services, Inc. v. General Services Administration, CBCA 3772, 15-1 BCA ¶ 35,845 (2014).

Background

Crockett and GSA entered into a contract on September 12, 2007, for operations and maintenance services at the National Courts Complex in Washington, D.C. Crockett performed the services from October 1, 2007, to May 31, 2013. GSA paid Crockett a monthly fee for these services.¹ On December 31, 2013, applicant submitted a claim in the amount of \$87,215.40 for the payment of numerous unpaid invoices to an individual at GSA who was not the contracting officer. Crockett also sought interest and attorney's fees. Applicant received no response from GSA. On March 20, 2014, the Board docketed the underlying appeal by Crockett as a deemed denial of its claim. 41 U.S.C. § 7103(f)(5).

Subsequent to the filing of the appeal, GSA determined that it had already paid almost \$74,000 of the amount sought and that \$13,374.86 of the claim was the only amount not yet paid by GSA. Though GSA believed that the work represented by these unpaid invoices had been ordered by unauthorized GSA employees, in May 2014 it offered to pay all of the unpaid invoices on the basis that it had received the benefits of the unauthorized work.

However, the parties were unable to resolve the matter as Crockett demanded the payment of attorney fees in the amount of \$1457.08, in addition to the payment of the invoices. Crockett also sought the payment of interest on its claim. GSA refused to pay attorney fees, but offered \$13,800 to resolve the matter, an amount that included interest on the unpaid invoices. Thereafter, the parties were unable to reach an agreement on all issues. In December 2014, pursuant to a joint stipulation, the parties agreed to the payment by GSA of all unpaid invoices (\$13,374.86), plus interest, with Crockett reserving its right to seek fees under the EAJA. The Board granted the appeal on this basis.

Discussion

GSA argues that Crockett has not proven that it qualifies for an EAJA award as it has not submitted information that it met the basic threshold criteria regarding net worth and employee size required by the statute. Applicant filed no response to this argument. GSA also maintains that its position in payment of the invoices was substantially justified.

¹ The background facts are included in the underlying record and in respondent's submission to the Board, which is supported by affidavits of two GSA employees involved in this matter. These facts have not been disputed by applicant.

Crockett argues that it was the prevailing party in the underlying litigation and that GSA's position before and subsequent to the litigation was not substantially justified.

In order to be eligible for an award of attorney fees, an applicant must be the prevailing party in the underlying litigation and must meet net worth and employee size requirements. 5 U.S.C. § 504(b)(1)(6).² A party is a prevailing party under the EAJA if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing the lawsuit. *Michael C. Lam v. General Services Administration*, CBCA 1472-C(1213), 09-2 BCA ¶ 34,227. The applicant also bears the burden of demonstrating by a preponderance of the evidence that it meets the net worth and employment size requirements. *Data Enterprises of the Northwest v. General Services Administration*, GSBCE 16536-C(15607), 05-1 BCA ¶ 32,968. Once these threshold requirements are met, an applicant is entitled to an award of attorney fees and other expenses unless the Board finds that the position of the Government was substantially justified or that special circumstances make an award unjust. 5 U.S.C. § 504(a)(1). The Government's position is substantially justified if it is justified in substance or in the main, or justified to a degree that would satisfy a reasonable person. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The burden of proof in establishing substantial justification falls upon the Government. *Id.* at 575-76. In making this determination, "trial courts are instructed to look at the entirety of the government's conduct and make a judgment call whether the government's overall position had a reasonable basis in both law and fact." *Chiu v. United States*, 948 F.2d 711, 715 (Fed. Cir. 1991).

GSA paid the previously unpaid invoices and has not contended that Crockett was not the prevailing party in the underlying action. We find that Crockett was the prevailing party since it succeeded in receiving payment on part of its claim.

Crockett has submitted an exhibit generated from the Government's System Award Management database indicating that it is an economically disadvantaged women-owned small business. Nothing in this exhibit or in its fee application provides information regarding the number of people it employs or its net worth. Crockett has, therefore, failed to carry its burden that it has met the statutory criteria. While this alone disqualifies applicant from an EAJA award, we will also discuss the remaining statutory requirement regarding substantial justification.

² For a corporation, the applicant may not have a net worth in excess of \$7,000,000 or more than 500 employees at the time the appeal is filed.

Here, Crockett submitted a claim to GSA on December 31, 2013. There was an initial delay by GSA in reviewing this matter because the claim was submitted to the incorrect GSA person. Once the correct person became aware of the claim, by the filing of the appeal, there was additional delay in attempting to resolve the claim because the work represented by the unpaid invoices had not been ordered by authorized GSA employees. It was then discovered by GSA that Crockett's claim was largely based on invoices that GSA had already paid. It took GSA time to sort out the incorrect amount claimed by Crockett and to reach a decision regarding payment for unauthorized work. Given these circumstances, we do not find the period of review needed by GSA to be excessive. It promptly offered to resolve the claim after completing this assessment. Thereafter, it offered payment of the invoices with interest. GSA's overall position had a reasonable basis and was substantially justified.

Applicant has failed to meet the threshold tests of eligibility for EAJA fees. In addition, GSA's actions in resolving the matter of the unpaid invoices were substantially justified. Crockett is not entitled to fees under the EAJA.

Decision

The application is **DENIED**.

JAMES L. STERN
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

H. CHUCK KULLBERG
Board Judge